

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS AND DEEMED APPLICATIONS) (AMENDMENT) (ENGLAND) REGULATIONS 2010

2010 No.

1. This explanatory memorandum has been prepared by the Department of Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations amend, as to England only, the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 (“the 1989 Regulations”). The amendments provide for fees to be payable for the determination of applications to the local planning authority for a new planning permission to replace an existing permission for development that has not yet commenced and for a non-material change to an existing planning permission.

2.2 These Regulations set categories of fees in relation to applications of the descriptions referred to in articles 4F and 10B of the Town and Country Planning (General Development Procedure) Order 1995 (“the GDPO”). In relation to article 4F, the fee payable is £25 for “householder applications” (defined in article 1(2) of the GDPO, inserted by S.I. 2009/453) and £170 for all other applications. In relation to article 10B, the fee is £50 for a “householder application”; £500 for an application for major development; and £170 for all other applications.

2.3 The proposed levels of fees have been set with reference to: the fees for similar procedures; the relative levels of fees for the original applications; existing fee variations relating to householder applications; local authority representations on the costs of administering the new procedures; and other consultation responses.

2.4 The Regulations also provide for a decrease from £250,000 to £1,690 in the fee for an application for planning permission for the carrying out of operations not falling within any of the other categories described in Part 2 of Schedule 1 to the 1989 Regulations. Since the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2008 came into force, a number of representations have been received concerning the effect of the increase in the cap for applications which are covered by Part 2 of Schedule 1 to the 1989 Regulations specifically category 9(b) applications, which was raised from £1,350 to £250,000. The cap

should have only been increased by 25%. The Government response to the representations has been that the fee cap would be corrected when the next amendment to the Regulations was undertaken.

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

3.1 These Regulations relate to the imposition of new fees categories as well as a decrease in existing fee levels under the 1989 Regulations.

3.2 Since the original SI was adopted in 1989 there have been a series of research projects examining the fee structure, the relationship between income and the cost of the planning service and the impact of recent changes. In addition to the research all changes are subject to consultation with practitioners in order to understand the impact of both the existing and proposed fees regime on different parties - both applicants and local authorities. The last three research projects were undertaken by Arup in 2003, 2007 and 2009 (not yet published).

4. Legislative Context

4.1 The Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) Regulations 2009 are made as a result of the addition of two new categories of application under the Town and Country Planning (General Development Procedure) Order 1995 which were inserted by the Town and Country Planning (General Development Procedure) (Amendment No.3) (England) Order 2009 (S.I. 2009/2261) (“the 2009 Order”).

4.2 The 2009 Order enables applications to be made for non-material changes to planning permission under article 4F as well as for the grant of replacement planning permission subject to a new time limit under article 10B (1) (b).

4.3 These Regulations set categories of fees in relation to applications of the descriptions referred to in articles 4F and 10B. In relation to article 4F, the fee payable is £25 for “householder applications” (defined in article 1(2) of the Town and Country Planning (General Development Procedure) Order 1995, inserted by S.I. 2009/453)) and £170 for all other applications. In relation to article 10B, the fee is £50 for a “householder application”; £500 for an application for major development; and £170 for all other applications.

4.4 These Regulations also establish a lower fee cap specifically for planning applications falling within category 9(b) of Part 2 of Schedule 1 to the 1989 Regulations, reducing the cap from £250,000 to £1,690. This cap was raised to £250,000 by the 2008 revision (S.I. 2008/958), when it should have been increased in line with the overall fee increase. The JCSI did not raise any concerns regarding the increase in this particular category and, although the Merits Committee raised a number of concerns, these were more generic such as:

- why did the 2005 increase not achieve cost recovery?;
- how does this relate to the profile of planning applications?
- if there is a fall in applications, why is the system not cheaper to run?; and
- where the incentive lies to control costs.
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5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

John Healey, the Minister for Housing and Planning has made the following statement regarding Human Rights:

“In my view the provisions of the Town and Country (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2009 are compatible with the Convention rights”.

7. Policy background

- *What is being done and why*

7.1 The measures in the 2009 Order form part of a package which will allow for greater flexibility and certainty in the planning system and will provide a proportionate and graded approach to making changes to existing planning permissions in cases where an entirely new full application is not justified. The 2009 Order sets out the form and manner in which an application for a non-material amendment under s.96A of the Town and Country Planning Act 1990 must be made, and enables existing planning permissions to be replaced before they expire, in order to allow a longer period for implementation. The measures and associated fees were consulted on in the consultation paper *Greater Flexibility for Planning Permissions*: www.communities.gov.uk/publications/planningandbuilding/flexibilitypermissions.

7.2 The fees for applications for non-material amendments proposed in the consultation paper were: £25 for householder applications and £170 for all other applications. The fee of £170 reflects the fee for an application under s.73 of the Town and Country Planning Act 1990, which is also a means of making post-permission changes to a scheme. The reduced fee for householders reflects the fact that these are usually much simpler schemes, and consequently any non-material amendments sought are likely to be quicker and simpler for the local planning authority (“LPA”) to determine. Currently LPAs frequently require a new application in order to make small changes to a scheme. The lower fee for householders also reflects the fact

that the fee for an entirely new householder application for planning permission is £150, compared to an average fee of £550 for minor development and £4,100 for major development (Table 1, Impact Assessment, <http://www.communities.gov.uk/publications/planningandbuilding/flexibilitypermissionsia>).

7.3 The consultation paper proposed a flat fee of £170 for an application for a replacement permission to allow a longer time period for implementation. This was in line with the fee payable when the period for implementation of a planning permission could be extended by means of an s.73 application. However, this related to the proposal that applications should only be possible in respect of major developments. Following consultation, this element of the package was changed, so that any size scheme is covered. In the light of this, and in the light of consultation responses on the fee level, revised fee levels are now proposed – see paragraph 8 below.

7.4 These Regulations also establish a lower fee cap specifically for planning applications falling within category 9(b) of Part 2 of Schedule 1 to the 1989 Regulations, reducing the cap from £250,000 to £1,690. This cap was raised to £250,000 in the last revision of the Regulations, when it should have been increased in line with the overall fee increase. This was an error which was raised after the 2008 revision (S.I. 2008/958) came into force; it was not picked up through the consultation on the proposed changes to the 1989 Regulations. The lower cap on this category should ensure that schemes such as habitat creation are not subjected to an unrealistic fee as a result of the area of land take.

- ***Consolidation***

7.5 Further research has just been completed and work is being undertaken to consider a fundamental review of fees for planning applications. Consolidation of the 1989 Regulations is being considered as part of the review which will be brought before Parliament in due course.

8. Consultation outcome

8.1 A web-based consultation was carried out between 18 June and 13 August 2009. An 8-week consultation period was agreed by ministers in recognition of the fact that the proposal to allow minor amendments (which resulted in section 190 of the Planning Act 2008) was consulted on as part of the White Paper *Planning for a Sustainable Future* in 2007; the need for a procedure to address minor material amendments had already been accepted in the Government's response to the Killian Pretty Review; and it was considered important, in light of the number of planning permissions which have not been implemented and are approaching their expiry date, that a mechanism for replacing those permissions should be introduced as soon as possible.

- 8.2 Responses to the consultation document were received from approximately 130 respondents, comprising a range of organisations and individuals. The largest group of respondents were businesses, followed by LPAs.
- 8.3 *Non-material amendments:* While a significant minority of business respondents considered that the fee of £170 was too high, a majority of LPAs and a majority of respondents overall agreed that the fees for a non-material amendment should be £170/£25 as proposed.
- 8.4 *Replacement permissions:* The consultation paper proposed a flat-rate fee of £170 (in respect of major developments only). There was a clear split in views on this between LPAs and business. Almost all business respondents were content with this proposed fee level; however, a large majority of LPAs considered it was too low, stating that £170 does not reflect the cost of processing and determining applications to extend the time limits for major proposals.
- 8.5 Following the decision to widen the power so that all types of proposed development were covered, and in the light of the above responses, new fee levels were proposed: £500 for major developments, £50 for householder applications, and £170 for all other applications. These differential fee levels are based on the fact that, in general, larger schemes are likely to be covered by more policies; require a greater level of consultation and publicity; and be dealt with at a more senior level within the LPA. The cost to LPAs of both processing and determining larger schemes is therefore likely to be higher. The differential between the £50 householder fee for this measure, and the £25 householder fee for an application for a non-material amendment is due to the fact that determining an application for a replacement permission involves considering any changed policies affecting the entire scheme rather than those affecting simply the proposed amendment, and that the procedure applicable to non-material amendment carries no consultation requirements.
- 8.6 As respondents to the consultation paper did not have a chance to comment on these proposed levels, a short targeted re-consultation was carried out. Views were sought from members of an existing steering group which was established to assist with developing research on fees for planning applications. The department also sought further views from all respondents to the original consultation exercise. The department considered it inappropriate to carry out a further formal consultation because of the need to revise the 1989 Regulations quickly so as to relieve applicants of the burden of continuing to pay a fee equivalent to that for a new application. The department's view was that further delay would reduce the usefulness and effectiveness of the measure in the current economic climate.
- 8.7 There were 26 respondents to this further consultation. A slim majority overall agreed that the proposed (revised) fees were acceptable, including a slim majority of both LPAs and businesses. There was little consistency among those opposed to the revised fees, with some LPAs considering that the proposed fees were not high enough, and some businesses considering that the fee of £500 was too high.

8.8 The department decided to proceed with the amendment of the 1989 Regulations on the lines of the revised proposals for the reasons stated at the end of paragraph 8.6 and the end of paragraph 8.7.

8.8 *Decrease in fees:* Since the Town and Country Planning (Fees for Applications and Deemed Applications)(Amendment)(England) Regulations 2008 came into force, a number of representations have been made, including Parliamentary Questions, concerning the effect of the increase in the cap for category 9(b) applications, which was raised from £1,350 to £250,000. The cap should have been increased by 25% bringing the fee cap to £1,690. The Government response to the representations has been that the fee cap would be corrected when the next amendment to the Regulations was undertaken. A letter was sent to all LPAs in England informing them that the maximum fee for applications in category 9(b) would be set at an appropriate level given the maximum fee cap of £1,350 that operated prior to being amended by the 2008 Regulations. No local authority responses were received to the letter.

9. Guidance

9.1 Draft guidance on the operation of these measures and the related fees was provided in the consultation paper *Greater Flexibility for Planning Permissions*. Revised and updated guidance will appear as part of the new development management policy framework, which will set out national policy on the development management process and will include a policy statement on the Government's aims and key policies on effective development management. It is due to be launched later this year.

10. Impact

10.1 The Impact Assessment which was prepared in respect of the 2009 Order covers the measures introduced in that Order and the associated proposed fees It is available at

<http://www.communities.gov.uk/publications/planningandbuilding/flexibilitypermissions>

10.2 The change to reduce the fee cap in category 9(b) will not have any significant effect as there are only approximately 13,500 applications per annum which fall within this category. The average application fee for these applications before the higher cap was introduced would be approximately £325 and therefore way below the current maximum fee and approximately 20% of the lower fee cap of £1,690. However, this is based on the average fee not the cost of actual applications which in some cases would be significantly in excess of £1,690 hence the need to re-introduce the fee cap. The proposed change will have a very limited effect on fee income and therefore no further impact assessment has been undertaken. Small businesses will welcome the change

having been the main proponents of the representations concerning the higher fee cap.

11. Regulating small business

11.1 The 2009 Order does not apply directly to small business. However, small businesses applying for planning permission of the descriptions relevant to these Regulations should benefit from the revised fees.

12. Monitoring & review

12.1 The numbers of applications made using these new powers and procedures will be monitored through the Planning Portal (the Government's on-line planning service) and through data collected on the number of planning applications made which is submitted quarterly to CLG. We will also continue to work with the Local Government Association and other stakeholders, to review the impact of the introduction of the new fees after a year or so.

13. Contact

Maria Stasiak at Communities and Local Government, on 0303-444-1624, or maria.stasiak@communities.gsi.gov.uk, can answer any queries regarding this instrument.

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