

EXPLANATORY MEMORANDUM TO

THE INFRASTRUCTURE PLANNING (DECISIONS) REGULATIONS 2010

2010 No.

1. 1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 These regulations prescribe a list of matters to which the relevant decision-maker (either the Infrastructure Planning Commission or the Secretary of State) must have regard when taking decisions on applications for nationally significant infrastructure projects.

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

3.1 This is the first use of powers conferred by sections 104(2)(c) and 105(2)(b) of the Planning Act 2008, which were brought into force by section 241 of that Act.

4. Legislative Context

4.1 These regulations are made under the Planning Act 2008 (“the Act”) to legislate to create a new system for dealing with development consent for nationally significant infrastructure projects. Parts 1 to 8 of the Act provides for the grant of development consents for development consisting of nationally significant infrastructure projects. Where development consent is required under the Act there is no need for certain other consents to be obtained – such as planning permission, pipeline authorisation or consent under the Electricity Act 1989 or the Gas Act 1965. The Act also provides for the establishment of the Infrastructure Planning Commission (“the IPC”) which will examine and, where a national policy statement has been designated, determine applications for development consent.

4.2 Part 6 of the Act sets out the procedure to be followed in deciding applications for orders granting development consent. Chapter 5 of that Part (sections 103 to 107) deal with decisions on applications. Section 104 sets out what the Panel or Council (as the case may be) in coming to their decision must have regard to and section 105 matters to which the Secretary of State must have regard if it falls to him to make the decision.¹ The Infrastructure Planning

¹ Section 61 of the Act provides that the Chair of the IPC must decide for each application whether the examination should be handled by a single Commissioner or a Panel of Commissioners. Assuming the decision falls to the IPC rather than the Secretary of State, where an examination is dealt with by a single Commissioner, the Commissioner must send a report to the IPC council, who will take the decision (see

(Decisions) Regulations 2010 prescribe other matters that the decision-maker will need to take into account when considering an application, under the enabling powers in sections 104(2)(c) and 105(2)(b) of the Act, and, in accordance with section 232(7) of that Act, must be approved by resolution of each House of Parliament.

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales and Scotland.

5.2 The devolved administrations have responsibility for planning for the most part, but there are certain narrow categories of infrastructure where decision making is not devolved and where decisions will therefore be made under the Planning Act, for example the IPC would not take decisions on infrastructure projects falling within Scotland except for cross border oil and gas pipe-lines.

6. European Convention on Human Rights

6.1 The instrument does not amend primary legislation so no statement is required.

7. Policy background

- *What is being done and why*

7.1 The Act has made provision for:

- The production by the Government of national policy statements (“NPSs”) for nationally significant infrastructure. These will integrate environmental, social and economic objectives, including climate change commitments, for the delivery of sustainable development. They will set out the national need for infrastructure development and set the policy framework for IPC decisions. They will be a major step towards the overall goal of speeding up the process of delivering infrastructure.
- A new duty on promoters to ensure that proposals are properly prepared and consulted on before they submit an application for nationally significant infrastructure projects.
- A new independent body, the IPC, to take over responsibility for considering and deciding such applications. Decisions will be based primarily on the National Policy Statements. The examination process will be streamlined. Questioning at hearings will be led by commissioners rather than being adversarial.

7.2 These regulations form part of the third tranche of statutory instruments and guidance documents to be published under the Act. The first two tranches dealt with consultation on national policy statements, the procedures for pre-application consultation, and making applications under the new regime. The third tranche, in addition to these regulations, deals with issues related to the

sections 83 to 85). Where an application is examined by a Panel, the Panel will take the decision themselves (section 74).

examination and decision making phases, including regulations and guidance in connection with the examination of applications, compulsory purchase, and fees. It is intended to bring this package into force on 1 March 2010.

7.3 The Government has published an IPC Implementation “Route Map” which sets out in detail how the IPC regime is being implemented, including the timetable for bringing in the legislation and guidance. (See <http://www.communities.gov.uk/documents/planningandbuilding/pdf/routemap.pdf>.)

7.4 The purpose of these regulations is to ensure that the matters to which decision-makers must have regard under the present planning regimes continue to apply to decisions under the Act.

7.5 Certain requirements are placed on planning decision-makers by a range of legislation. In some instances (for example s.11A(2) of the National Parks and Access to the Countryside Act 1949), the duties apply to ‘any public body’. Those drafted in this way will already apply to decisions made under the Act and do not need to be applied through these regulations.

7.6 The requirements included in these Regulations are those which, because of the way in which they are drafted, will not apply to one or more of the decision-makers under the Act, and therefore need to be specifically applied. For example, section 40(2) of the Natural Environment and Rural Communities Act 2006 requires a Minister of the Crown, a government department or the National Assembly for Wales, when carrying out their duty to conserve biodiversity, to have regard in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992. Because this duty currently applies only to Ministers, who currently decide many kinds of applications that will now fall to the IPC, it is appropriate that this duty should be binding on the IPC also, and is therefore specifically applied to the IPC by these regulations.

7.7 These requirements exist, in the main, to ensure that decision-makers take proper account of the effects their decisions may have in certain areas (in the marine area, on biodiversity etc). Because such issues are cross cutting, it is important that there is consistency across the legislative framework applying to decision makers under both the Planning Act and the wider TCPA system.

- ***Consolidation***

NA

8. Consultation outcome

8.1 The government consulted on a draft version of the Regulations between 14 July and 5 October 2009. The consultation document can be found at <http://www.communities.gov.uk/archived/publications/planningandbuilding/consultationexaminationnsips>. The consultation document also consulted on other instruments which are planned to be made in January 2010 and brought into force on 1st March 2010. There were a total of 75 relevant responses. Respondents expressed a general welcome for these regulations.

8.2 Some consultees suggested that the decision-maker should have regard to certain matters of policy which are not currently binding on decision makers in legislation, such as climate change and landscape. However, it is a fundamental principle of the new regime that Ministers should set out the policy framework in NPSs, whilst decisions must be made in accordance with that NPS. It would also be inappropriate to develop new statutory requirements relating to these policy matters specifically for the regime under the Act – any changes to the planning policy framework (and its statutory context) must be executed and justified in the wider statutory context.

8.3 A number of energy stakeholders suggested that decision-makers should have regard to the pre-application consultation and the consultation report. The Department does not agree that this would be appropriate. Decisions must be made on the basis of whether the benefits of the project outweigh its adverse impact. Pre-application consultation will help the IPC to determine how the application should be examined, but the complex judgements involved in weighing the benefits and adverse impacts of proposals can only be made through the examination process itself.

9. Guidance

9.1 No guidance has been prepared in relation to these regulations.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument because it does not have an additional impact on business, charities or the public sector beyond that examined in the Impact Assessment that accompanied the Bill when introduced to Parliament.

11. Regulating small business

11.1 The legislation applies to small business, but the government believes it is unlikely that a small business will apply for a development consent order under the Planning Act 2008.

12. Monitoring & review

12.1 This instrument may need to be updated over time, to reflect changes to the legislative framework which applies to decision makers under other planning regimes. In particular, these regulations may be subject to amendment once the marine licensing regime set out in part 4 of the Marine and Coastal Access Act 2009 is commenced (anticipated in spring 2011). CLG will continue to work with other Government Departments to ensure that the schedule of consents is appropriate and up to date.

13. Contact

Cathal Rock at the Department for Communities and Local Government Tel: 0303 444 1620 or email: cathal.rock@communities.gsi.gov.uk can answer any queries regarding the instrument.