| Title: | Impact Assessment (IA) |
|---|---|
| **Changing or revoking a Development Consent Order for nationally significant infrastructure (Planning Act 2008)** | **IA No:** DCLG 0024 |
| **Lead department or agency:** Department for Communities and Local Government | **Date:** 12/08/2011 |
| **Other departments or agencies:** Department for Energy and Climate Change; Department for Environment, Food and Rural Affairs; Department for Transport | **Stage:** Enactment |
| | **Source of intervention:** Domestic |
| | **Type of measure:** Secondary legislation |
| | **Contact for enquiries:** Paul Lancaster Tel 0303 44 41597 paul.lancaster@communities.gsi.gov.uk |

# Summary: Intervention and Options

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

The Planning Act 2008 has established a new regime for the consenting of nationally significant infrastructure projects. Consent is granted through the making of a development consent order. As circumstances may change after the order has been made, it is necessary for the new regime to also include procedures for making changes to, or revoking, a made order. The change in circumstances could require either 'non-material' changes to an order (i.e. relatively insignificant) or 'material' changes (i.e. significant, including revocation), and be requested by either the project's promoter or other persons as specified within the Planning Act. Without such procedures, the whole order would unnecessarily have to be applied for again, and which would thereby entail a higher cost to the applicant.

**What are the policy objectives and the intended effects?**

To set out in regulations the procedures, and the fees payable, for seeking 'non-material' and 'material' changes to, or a revocation of, an order and, where applicable, for seeking compensation. The objective is for the procedures to be sufficiently robust to ensure the potential impacts of the proposed changes can be thoroughly considered; enable legitimate rights to be heard; but not be onerous so as to be disproportionate. The consideration would be limited to issues raised about the proposed changes, and not allow for a re-opening of any debates about the rest of the order. Fees should be payable to recover, as far as possible, the costs incurred by the examining body, when the application is not determined by the Secretary of State.

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

(1) Introduce regulations which: require procedures for a 'material change' application (including revocation) that are similar to those required for seeking the original order, with a similar fees structure; a more simplified process for seeking a 'non-material change', with a simple flat rate fee; and a compensation procedure that is based on that which exists within the Town and Country Planning Act 1990. (Preferred Option)

(2) Do nothing, i.e. not introduce regulations.

The Preferred Option is (1) as it is essential to have a process that will enable changes to be made to an order after it has been made. It will constitute a cost savings for a promoter that needs or wants to make changes, as it would otherwise have to unnecessarily seek a whole development consent order permission all over again which would incur higher costs. Within Option 1 some sub-options (e.g. whether to hold a preliminary meeting; whether publicity costs should be borne by the authority) were considered and consulted on, the decision taken on each of these are outlined in the main body of the Impact Assessment.

| | |
|---|---|
| **Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 10/2016 | |
| **What is the basis for this review?** Duty to review. **If applicable, set sunset clause date:** Month/Year | |
| **Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?** | Yes |

**SELECT SIGNATORY Sign-off** For enactment stage Impact Assessments:

***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) the benefits justify the costs.***

Signed by the responsible Minister: Bob Neill Date: 18 August 2011

# Summary: Analysis and Evidence

Policy Option 1

**Description:**

| Price Base Year 2010 | PV Base Year 2010 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|---|---|---|---|---|---|
| | | | **Low:** £2m | **High:** £8m | **Best Estimate: £6m** |

| COSTS (£m) | Total Transition (Constant Price) | Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---|---|---|---|---|
| **Low** | n/a | | £0.08m | **£0.7m** |
| **High** | n/a | | £0.30m | **£2.6m** |
| **Best Estimate** | | | £0.23m | **£2.0m** |

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

Estimates show the cost of fees to applicants (businesses) over 10 years as a result of the change. These are the gross costs to applicants as a result of this change. NB: In net terms there is a saving to applicants as the costs of the fees under this change are lower than the likely costs in the absence of the changes (the do nothing).

Estimates presented for three scenarios, constructed on basis of the proportion of orders that are changed. For central case this is 10% for both material and non-material, split £1.7m and £0.3m respectively (10 year discounted).

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

| BENEFITS (£m) | Total Transition (Constant Price) | Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---|---|---|---|---|
| **Low** | n/a | | £0.34m | **£2.9m** |
| **High** | n/a | | £1.20m | **£10.5m** |
| **Best Estimate** | | | £0.92m | **£8.0m** |

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

These are estimates of the fees costs likely to be incurred in the absence of these changes, i.e. they represent the gross benefit (costs avoided) from the change. Estimates presented for three scenarios, constructed on basis of the proportion of orders that are changed. For central case this is 10% for both material and non-material, split £4.7m and £3.2m respectively (10 year discounted).

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

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

See page 13 onwards for details. Central case is based on 45 development consent order applications per annum and 10% (for both material and non-material) likely to come forward for a change. Sensitivities provided for 5% and 15%. 80% of material changes assumed to be by a single commissioner with remaining 20% conducted by a panel. Table 9 below shows the detailed estimates for the fee costs per case in the do-nothing scenario, with Tables 1 and 3 showing the fee costs for non-material and material changes respectively as a result of the change.

| Direct impact on business (Equivalent Annual) £m): | | | In scope of OIOO? | Measure qualifies as |
|---|---|---|---|---|
| **Costs: 0.32** | **Benefits: 0.92** | **Net: 0.69** | Yes | OUT |

# Enforcement, Implementation and Wider Impacts

| | | | | | |
|---|---|---|---|---|---|
| What is the geographic coverage of the policy/option? | | | Great Britain | | |
| From what date will the policy be implemented? | | | 06/04/2011 | | |
| Which organisation(s) will enforce the policy? | | | IPC | | |
| What is the annual change in enforcement cost (£m)? | | | Nil | | |
| Does enforcement comply with Hampton principles? | | | Yes | | |
| Does implementation go beyond minimum EU requirements? | | | No | | |
| What is the $CO_2$ equivalent change in greenhouse gas emissions? (Million tonnes $CO_2$ equivalent) | | | **Traded:** | | **Non-traded:** |
| Does the proposal have an impact on competition? | | | No | | |
| What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable? | | | **Costs:** | | **Benefits:** |
| Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price) | **Micro** | **< 20** | **Small** | **Medium** | **Large** |
| Are any of these organisations exempt? | No | No | No | No | No |

# Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

| Does your policy option/proposal have an impact on…? | **Impact** | **Page ref within IA** |
|---|---|---|
| **Statutory equality duties**[1] Statutory Equality Duties Impact Test guidance | No | 26 |
| **Economic impacts** | | |
| Competition Competition Assessment Impact Test guidance | No | 26 |
| Small firms Small Firms Impact Test guidance | No | 26 |
| **Environmental impacts** | | |
| Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance | No | 26 |
| Wider environmental issues Wider Environmental Issues Impact Test guidance | No | 26 |
| **Social impacts** | | |
| Health and well-being Health and Well-being Impact Test guidance | No | 26 |
| Human rights Human Rights Impact Test guidance | No | 26 |
| Justice system Justice Impact Test guidance | No | 26 |
| Rural proofing Rural Proofing Impact Test guidance | No | 26 |
| **Sustainable development** Sustainable Development Impact Test guidance | No | 26 |

[1] Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

# Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

| No. | Legislation or publication |
|---|---|
| 1 | The Infrastructure Planning (Changes to, and revocation of development consent orders) Regulations 2011 (coming into force in 2011) |
| 2 | Consultation on procedures for revoking or making changes to Development Consent Orders for nationally significant infrastructure projects http://www.communities.gov.uk/publications/planningandbuilding/dcosconsultation |
| 3 | The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (SI 2009/No.2264) |
| 4 | The Infrastructure Planning (Examination Procedure) Rules 2010 (SI 2010/No.103) |
| 5 | The Infrastructure Planning (Fees) Regulations 2010 (SI 2010/No.106) |
| 6 | Planning Act 2008: The Infrastructure Planning (Fees) Regulations 2010 – Guidance |
| 7 | Impact Assessment of fees to be charged by the Infrastructure Planning Commission, and the examination procedure rules (at end of Explanatory Memorandum, located at - http://www.legislation.gov.uk/uksi/2010/106/notes/contents?type=em) |
| 8 | Planning Bill: Impact Assessment (Published 27 November 2007, CLG) |
| 9 | Annex to the Planning Bill Impact Assessment : Royal Assent (Published 30 January 2009, CLG) |

**+ Add another row**

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

### Annual profile of monetised costs and benefits* - (£m) constant prices

| | $Y_0$ | $Y_1$ | $Y_2$ | $Y_3$ | $Y_4$ | $Y_5$ | $Y_6$ | $Y_7$ | $Y_8$ | $Y_9$ |
|---|---|---|---|---|---|---|---|---|---|---|
| **Transition costs** | | | | | | | | | | |
| **Annual recurring cost** | | | | | | | | | | |
| **Total annual costs** | 0.22 | 0.22 | 0.22 | 0.22 | 0.35 | 0.22 | 0.22 | 0.22 | 0.22 | 0.22 |
| **Transition benefits** | | | | | | | | | | |
| **Annual recurring benefits** | | | | | | | | | | |
| **Total annual benefits** | 0.88 | 0.88 | 0.88 | 0.88 | 1.30 | 0.88 | 0.88 | 0.88 | 0.88 | 0.88 |

* For non-monetised benefits please see summary pages and main evidence base section

Microsoft Office Excel Worksheet

# Evidence Base (for summary sheets)

## Policy context

The Planning Act 2008 (the Act) provided for the replacement of multiple and overlapping consent regimes for nationally significant infrastructure with a new single consent regime, with decisions being taken by an Infrastructure Planning Commission (the 'Commission') within a framework of National Policy Statements (NPSs) set by Ministers. It placed a new duty on promoters of such infrastructure projects to ensure that proposals are properly prepared and consulted on before they submit an application to the Commission.

The Government has announced that the Commission will be abolished and a Major Infrastructure Planning Unit (MIPU) established to take its place. However, it is the Government's intention to retain a streamlined process for dealing with these projects. Until the Commission is abolished it will continue to receive and process the applications.

Consent is given through the making of a development consent order that is submitted as part of an application. Detailed procedures to be followed for the pre-application, application, examination and decision stages for a development consent order have already been consulted on and implemented through regulations. Schedule 6 of the Act sets out a framework for how an order may be changed or revoked after it has been made, and for the payment of compensation in certain circumstances. It provides for the Secretary of State to make regulations that prescribe the procedures to be followed. Without regulations it is not possible for part of an order to be changed, or an entire order to be revoked, under this consents regime once the order has been made. In such circumstances, if changes to the order were needed or wanted, it would be necessary for a new application to be submitted for the whole of the infrastructure project, not just for the proposed changes, i.e. it would be necessary to obtain a whole new development consent order. This is the counterfactual adopted in the IA.

## Schedule 6 of the Act

Under Schedule 6, an order may be subject to 'non-material changes', 'material changes' or 'revocation'. The Act does not define non-material or material, nor does it provide a power for these terms to be defined, and therefore more fully distinguished, in regulations. Consequently, it will be left to the discretion of the 'appropriate authority' to decide whether a proposed change to a particular order is to be considered as non-material or material. The appropriate authority will be the authority which made the original order and thereby granted the original consent, i.e. either the Commission or the Secretary of State. The Secretary of State would have granted the consent if there was no National Policy Statement in place when the decision was made on the original order, or if the Secretary of State had decided that the application had raised matters of defence or national security.

<u>Non-material changes</u>
The Act enables the Secretary of State to prescribe an application process and which includes the publicity, consultation and notification duties required of the appropriate authority. It does not provide for prescribing how such an application should be examined or a decision made. Under the Act, those who are able to make such an application are – the applicant for the original order or their successor in title; a person with an interest in the land to which the order relates; or any other person whose benefit the order has effect.

<u>Material changes</u>
The Act enables the Secretary of State to prescribe the pre-application requirements; the application process; examination and decision making processes; and a process for notifying the decision. An application for revocation would be treated as a material change to an order.

Under the Act, those who are able to make an application for a material change are:

(a) The applicant for the original order, or their successor in title; a person with an interest in the land to which the order relates; or any other person for whose benefit the order has effect.

(b) A local planning authority if a development has been started but abandoned on land, all or part of which is in the local planning authority's area, and where amenity of other land in that authority's area or an adjoining area is adversely affected by the condition of the uncompleted development land.

(c) Where the Commission is the appropriate authority, the Secretary of State can make an application to it where, if a development was carried out in accordance with a granted order, there would be a contravention of Community law or any of the Convention rights (as defined in the Act), or if there are other exceptional circumstances that would make it appropriate to consent a material change (including a revocation). If the Secretary of State is the appropriate authority in these circumstances, then the Secretary of State can consider making such a material change without the submitting of an application.

(d) The Act further provides for the appropriate authority to make a change to a made order without an application being made, if that authority decides the order contains a 'significant error' but which would not be appropriate to correct using correction provisions that are set out in Schedule 4 of the Act (see below). However, the Act does not define, or provide the power for the Secretary of State to define, the circumstances for when this action would be appropriate.

Correction of errors

Schedule 4 of the Act enables any minor errors in the drafting of the made order to be treated as a 'correction', and so would not be addressed under the proposed Schedule 6 procedures and therefore within this Impact Assessment. Such a correction would simply restore the text of an order to what it was intended to be, but which was incorrectly altered due to clerical error during its drafting.

Compensation

Schedule 6 of the Act also sets out the circumstances in which a claim for compensation could be made if a change (including revocation) is made to an order. Its provisions allow for a claim to be made by a person with an interest in the land, or whose benefit the order has effect. It would have to be shown they had incurred expenditure in carrying out work which is rendered abortive by the change or revocation, or have otherwise sustained loss or damage which is directly attributable to the change or revocation. The Schedule allows for regulations to be made by the Secretary of State, including concerning the assessment of compensation payable, and addressing a depreciation of the value of an interest in land.

## Policy objectives

The key policy objective is to ensure there are procedures in place to enable parts of an order to be changed after it has been made, so as to avoid the need for an infrastructure provider to have to undertake the more costly option of submitting an application for the whole scheme again, rather than just an application for the changes that it needs or wants to make. The regulations will also implement the provisions in the Act which enable the other persons or bodies, as defined above, to seek changes to, or revocation of, an order.

The procedures are not intended as a mechanism by which development consent for a scheme could deliberately be applied for and granted in stages, instead of through a single order. Rather, they are to provide for the circumstances where a proposed change to an order is one that could not have been foreseen as being necessary at the time the order was applied for. In

any case, the policy intention has been to introduce procedures for material change applications that are sufficiently robust so as to ensure those applications will be thoroughly prepared and examined, whatever the magnitude of the proposed change and addressing all relevant issues. For non-material changes, the Act requires the appropriate authority to have regard to the effect of any previous non-material changes that may have been granted for the same development consent order, when considering if any further applications submitted to it do indeed constitute non-material changes rather than being material. This is a safeguard against any risk of the cumulative effects of a series of applications for smaller changes not being thoroughly assessed.

There is a separate process for where an applicant is required to seek subsequent approval for any elements of an applied for order that could not have been given 'final' consent at the time the order was made by the appropriate authority, but which are still contained in that order in readiness for obtaining the approval at some point in the future. The changes and revocation procedures would not be used for those approvals.

It is essential the procedures for making changes to an order are sufficiently robust so as to enable a thorough and transparent consideration of the issues, but without being onerous or disproportionate. They must maintain a legitimacy of the consent regime by ensuring legitimate rights to be heard. The procedures must also ensure an adherence to environmental legislation, such as on Environmental Impact Assessment (EIA).

The matters that can be addressed during the application and examination processes will be limited to those that are relevant for a consideration of the proposed changes. It will not be possible, for example, for parties to re-open other arguments that were made during the consideration of the original order if they are not deemed relevant for a consideration of the proposed changes. It is for the appropriate authority to be satisfied that any issues are relevant.

Fees

Fees are chargeable for both non-material and material change applications, where that appropriate authority is the Commission. It is important that the fee structures and levels should, as far as possible, reflect the costs incurred by the Commission in determining applications. Schedule 6 of the Act does not provide for the Secretary of State to charge fees where it is the appropriate authority, or to delegate any of the procedural work to the Commission other than to be the recipient, in the first instance, of applications for non-material change.

Comparison with other infrastructure consenting regimes

The consent regimes under which the infrastructure projects were previously considered did not have a common approach to handling requests to change or revoke development consent. Some did not have specific procedures to enable the amendment of the consent, and so could require the re-submitting of a whole application all over again. The concept of a 'non-material change' does not exist in those other regimes. Major infrastructure projects that were determined under the Town and Country Planning Act 1990 were subject to that Act's revocation and modification procedures, and approach to compensation. Those procedures, and their underlying principles, were drawn on for the equivalent provisions in the Planning Act 2008 and for these regulations.

The introduction of a non-material change process will enable minor amendments to be made through the use of an appropriately simple procedure. The magnitude of significant impacts that could be caused by material changes will vary from case to case. Therefore, it is essential to introduce a process for material changes that will ensure appropriate publicity and consultation, and enable a thorough consideration of the issues by all relevant parties including the appropriate authority.

## Public consultation

A public consultation was undertaken between 1 November and 24 December 2010, on draft regulations that set out proposed procedures for revoking or making changes to a development consent order. The consultation document can be found at http://www.communities.gov.uk/publications/planningandbuilding/dcosconsultation

The consultation period was for eight weeks rather than twelve as many of the proposals, and their underlying principles, had already been consulted on previously as part of consultations on the application and examination procedures relating to an application for a development consent order. Twenty-one responses were received, thirteen of which were from infrastructure developers. The main comments that were made, and how they have been taken into account in the finalisation of the policy and the regulations, are incorporated into the analysis of the options, below.

## Description of options

### Option 1 – Preferred option

Introduce regulations that set out the procedures for applying for and determining changes to, or revocation of, a development consent order after it has been 'made'.

Schedule 6 of the Act provides the framework to which any procedures must adhere. Set out below is our preferred approach to each part of that framework, and which is reflected in The Infrastructure Planning (Changes to, and revocation of development consent orders) Regulations 2011, which are intended to come into force in 2011.

### Non-material changes (Part 1 of the regulations)

Some of the stages that are needed for considering and determining a non-material change application are prescribed in detail within the Act. Other stages are prescribed within the regulations where an enabling power in the Act allows for that to be done. It is not possible to prescribe the remaining stages, such as the examination or consideration of an application, as there is no power to do so. For these, it will be for the appropriate authority to decide the processes that it will follow.

For the processes as a whole, a relatively light-touch approach is being used for non-material changes, as the policy assumption is that these will be insignificant or unsubstantial changes with negligible impact in relation to the original order. Potential examples could be minor changes to the layout of a drainage system, changes to an internal road layout within a power station complex, or re-routing the location of fencing.

The public consultation yielded a general agreement for the proposed light touch approach. For an applicant, it will mean submitting an application to the Commission, in the first instance, and which contains details of the change being requested and any other documents necessary to support the proposal. If it is the Commission that is then determining an application (i.e. if it is the appropriate authority), the application must be accompanied by a fixed fee of £6,891, the calculation of which is set out in Table 1.

Consultation requirements

The Act requires the appropriate authority to be responsible for undertaking consultation on a submitted non-material change application. In the regulations, the default requirement is that it must consult all of the statutory consultees and other prescribed persons unless it considers, on a case by case basis, that it is unnecessary to consult some of those bodies or persons. For the purpose of transparency it must publish, on its website, any decision that it takes to deviate from

the default lists. This discretionary flexibility has been included in response to several consultation respondents who felt that it may not always be necessary to consult all of the bodies or persons because of the nature of the proposed changes.

Publicity requirements

For the publicity, the appropriate authority must publish a notice about the application in local newspapers. In light of several consultation responses, we have removed our original intention to also require the kind of national publicity that is required for a development consent order application, as we agree with the suggestions that it was unnecessary given that the application is for changes that would only have a negligible impact. The proposed regulations did not allow for the appropriate authority to gain reimbursement of the local publicity costs from the applicant. A few respondents suggested it was not appropriate for those costs to be borne by that authority. We agree with this view, and have amended the regulations so that the Commission, when it is that authority, is required to seek that reimbursement.

**Material changes – including revocation (Part 2 of the regulations)**

The following procedures are applicable for where the applicant for a material change is either:

- the holder of the order (or its successor in title),
- a person with an interest in the land to which the order relates,
- any other person for whose benefit the order has effect, or
- a local planning authority that wants to take action where the development of an infrastructure project had been started but abandoned.

For the latter situation no fees are payable, whether or not the Commission is the appropriate authority.

The policy assumption is that a material change is likely to be significant and / or substantial, and therefore will have significantly more of an impact, in relation to the original order, than would a non-material change. Potential examples are relocating and / or increasing the size of buildings and which could have environmental or scenic implications, and relocating the location of a road junction and which could raise significant implications for traffic flow and intensity of use. It is anticipated that any proposed change that required the undertaking of an Environmental Impact Assessment is likely to be considered as a material change.

However, the impact of the proposed change could be from anything up to and including the impact of the original development consent order. As such, the stages for pre-application, application, examination and decision making have been closely modelled on those that are required for a development consent order. Such a robust process will also ensure compliance of what is required under the European Directive for Environmental Impact Assessments. The consultation yielded a general agreement for adopting this approach, although there were several requests for some flexibility to be built into the requirements, many of which we were able to accommodate, as set out below.

Consideration of alternative approaches

We considered whether other options for handling material change applications would be feasible and practical, such as the creation of a completely new set of procedures, or a more selective use of the existing development consent order procedures on a case by case basis and which, for example, could depend on the nature of the proposed changes. However, in terms of the latter, we believe it would be impractical, create uncertainty and confusion to introduce a series of alternative processes that could be utilised. Furthermore, such an approach would effectively be defining what a material change could be, whereas the Act does not provide a power for the Secretary of State to do this.

The existing development consent order procedures remain relevant and appropriate for material change applications and so we consider it is unnecessary, and it would be inefficient, to create a new set of procedures. In addition, utilising broadly the same procedures that are followed for a development consent order application will mean those involved in a material change application will benefit from already being familiar with what is required of them, and how they can engage in the process.

Material change application stages

Pre-application

The applicant:

- will be required to consult the local authority on the approach it intends to take for consulting the local community;
- must set out and publish that approach in a statement of community consultation, and then undertake the consultation in accordance with it;
- must publicise the proposed application in local and national newspapers; and
- as a default requirement, must also carry out consultation with all of the statutory consultees and other prescribed persons, unless the appropriate authority decides, on a case by case basis, that it is unnecessary to consult some of them.

The appropriate authority:

- must publish, on its website, any decision that it takes to allow the applicant to deviate from the default consultation requirement. As with non-material applications, this discretionary flexibility has been included in response to several consultation respondents who felt that it may not always be necessary to consult all of the bodies or persons.

A couple of consultation respondents felt that it was unnecessary to require the production of a statement of community consultation and a consultation report. However, we disagree as it is necessary to retain both. The statement of community consultation provides an important tool for enabling the local community to be identified and engaged in a formal manner. The applicant will be able to draw on the work that it had done when going through the statement of community consultation process for the original development consent order application. With the consultation report, the applicant is able to demonstrate how its submitted application has been shaped as a result of its consultation with local communities, statutory consultees and any other bodies.

Submission of an application

The application must be submitted to the appropriate authority and include:

- the consultation report, any plans and documents that are necessary to support the application,
- a statement that identifies what information that was contained in the original development consent order application is still correct and relevant, and what information has been revised or added. In order to avoid unnecessary burdens of providing previously submitted information, the applicant is able to just cross-refer to information that was submitted in that previous application, if that information is unchanged.

This approach was widely welcomed by respondents to the consultation. Some of them queried whether the information had to be set out in a specific format, such as a draft addendum to the existing development consent order. We have deliberately decided to not prescribe the format as we consider it appropriate to allow applicants the flexibility to utilise a format that is most relevant for their particular case. We envisage that applicants may wish to discuss their intended approach at the pre-application stage with the appropriate authority.

Where the Commission is the appropriate authority, the applicant must submit a fee of £4,500 alongside the application, so as to provide the Commission with some funding to commence its initial consideration of the application. One consultation respondent suggested there should be a formal 'acceptance stage' similar to for a development consent order application whereby the Commission considers whether the application documentation, consultation and publicity requirements have been met by the applicant – the Commission is required to refuse to accept an application if these are not met. However, unlike for a development consent order application, the Act does not provide for such an acceptance stage for material change applications.

When submitting the application, the applicant must notify and publicise in the same manner that it was required to do so at the pre-application stage. This process is necessary as the application may have changed following the pre-application consultation, and it is important to alert the public, statutory consultees and other prescribed persons to the submission of the final version. This is also the mechanism by which the deadline is set for the receipt, by the appropriate authority, of comments on the application and which is also the date for people to register as interested parties to be involved in the subsequent examination process.

Pre-examination

Where the appropriate authority is the Commission, it will need to decide whether the application will be examined by an examining body that consists either of a single commissioner, a 'normal panel' of two or three, or a 'large panel' of more than three commissioners.

The examining body must make an initial assessment of the principal issues arising from the application. It must then hold a preliminary meeting with the applicant and any other interested parties in order to discuss procedural issues of how the application should be examined, such as the process for undertaking written representations and whether any hearings should be held.

Where the appropriate authority is the Secretary of State, the Act does not provide for him to delegate the pre-examination or examination processes to the Commission for a material change application. It is envisaged that these will be undertaken by the Secretary of State's department, and using the same procedures within the regulations that are to be followed by the Commission. It will be for the department in question to decide how it wishes to form the examining body.

Where the Commission is the appropriate authority, fees are payable at the pre-examination and examination stages, in the same way that they are for a development consent order application. These are set out further below.

A few consultation respondents felt that it was unnecessary to always require a preliminary meeting to be held given that, for relatively smaller material changes in particular, the main issues may well already be known at the point when the application is submitted. However, we disagree, as the main purpose of the preliminary meeting is to discuss procedural issues, such as the timetable for the examination, and therefore it is necessary to require that such a meeting is always held.

Examination and decision

The examination must be completed within six months. Where the Commission is the appropriate authority, the decision must then be made within three months of the completion of the examination. Where the appropriate authority is the Secretary of State, the examining body must submit a written report (including a recommendation) to it within three months of the completion of the examination. The Secretary of State must then make its decision within three months of receiving that report. These deadlines are similar to those that are prescribed for the

determination of development consent order applications, and we have included them in response to suggestions made in the consultation.

In reaching the decision, the appropriate authority must have regard to the relevant National Policy Statement. Where consent is given for a material change (and which is not for revocation), the original development consent order continues in force as then modified by that material change. The appropriate authority must notify the decision to all persons and bodies who have interested party status.

**Making changes to an Order in other circumstances (Part 3 of the regulations)**

The Act provides for the appropriate authority to make a change to an order under Schedule 6 without an application being made if that authority decides the order contains a 'significant error', and is one which would not be appropriate to correct using the correction provisions that are set out in Schedule 4 of the Act. However, the Act does not define, or provide the power for the Secretary of State to define, the circumstances for when this action would be appropriate.

The Act also provides for the following. Where the Commission is the appropriate authority, the Secretary of State can make an application to it where, if a development was carried out in accordance with a development consent order, there would be a contravention of Community law or any of the Convention rights (as defined in the Act), or if there are other exceptional circumstances that would make it appropriate to consent a material change (including a revocation). If the Secretary of State is the appropriate authority in these circumstances, then the Secretary of State can consider making such a material change without the submitting of an application.

Notification and publicity

In all of the above circumstances, prior to the decision being made on the proposed change the appropriate authority must give notice of its intention to consider making such a decision to:

- each person for whose benefit the development consent has effect,
- each local authority that is a relevant local authority as defined by the Act,
- the Greater London Authority (where relevant),
- persons with an interest in the land,
- the statutory consultees,
- the Marine Management Organisation, and
- the Commission where the appropriate authority is the Secretary of State or the Secretary of State where the appropriate authority is the Commission.

The appropriate authority must also publicise this intention through the publication of a notice in local and national newspapers and in site notices, in the same manner that an applicant for a material change is required to do so for pre-application publicity. After consideration of any responses to the notification and publicity, the appropriate authority must then decide whether to make the change to an order, and then notify this decision to those it had notified previously and any other persons who had submitted a response. No fees are payable by anyone.

**Compensation**

The process for assessing claims for compensation, which may be made due to the granting of a change, is based on the compensation procedure in sections 107-118 of the Town and Country Planning Act 1990, subject to some modifications and which are set out in the regulations. The procedure includes a requirement that a claim for compensation would have to be made within 12 months from when the decision about the material change was made. Any dispute about the amount of compensation would be referred to the Upper Tribunal for

determination. Experience from the existing infrastructure regimes suggests that it is likely to be very rare for a claim for compensation to be made.

## Costs and benefits of Option 1

Context of the analysis

Impact assessments published for the introduction of the Planning Bill in Parliament, and after Royal Assent of the Planning Act 2008, set out an analysis of the costs and benefits of establishing the new infrastructure consents regime. These documents can be found at:

http://www.communities.gov.uk/publications/planningandbuilding/planningbill

http://www.communities.gov.uk/publications/planningandbuilding/annexeimpactassessment

These estimated that benefits of the new regime overall could be up to £300m a year, which includes £20m in non-fee administration savings at the examination stage to infrastructure scheme applicants, due to the quicker and more streamlined process for obtaining the development consent. These estimates, and the assumptions that underpinned them, form a wider context with respect to which the costs and benefits of the procedures for non-material and material change applications can be viewed. For the purpose of this impact assessment, the counterfactual situation is an applicant applying again for a whole development consent order, and would thereby bear effectively the same level of non-fee costs as would have been incurred under the original application for that order (non-fee costs include those incurred through pre-application consultation, preparation of application documents, and non-fee costs incurred through engagement in the examination process). These have therefore not been monetised here, however it is likely that these will, if anything, be lower under a change application than under the original application. This is due to less issues needing to be addressed, therefore requiring less documentation and consultation, and resulting in shorter examinations. This also means that, for all of the other parties involved in the infrastructure consenting process, i.e. the local authorities, statutory consultees any other organisations and also the public, their costs incurred through engaging in the pre-application and examination stages will be lower than for their involvement in the original application. As no development consent order applications have yet been progressed through the system, we are unable to quantify the likely magnitude of these non-fee cost savings for either the applicant or the non-applicants.

The following sections consider the fee and non-fee costs incurred by applicants and other parties for non-material and material change applications. It then compares these to the costs in each case of re-applying for consent for the whole of the infrastructure scheme, which is the counterfactual in the absence of these regulations. As such, in net terms there are savings to applicants which are considered at the end of this section.

Fees are only chargeable where the Commission is the appropriate authority, i.e. where it has the responsibility for determining the application rather than the Secretary of State. The Secretary of State would only be responsible for determining the application if it had granted the consent for the original development consent order, and which would have been in the circumstances of where there had been no National Policy Statement in place when the decision on that order was due to be made, or if the Secretary of State had decided that it had raised matters of defence or national security. Those situations are more likely to be the exception rather than the norm and, consequently, in most cases the applications for a non-material or material change would be determined by the Commission. Therefore, the cost and benefits estimations below have been based on an assumption that all non-material and material applications, and which are subject to fees, are determined by the Commission.

Non-fee costs and benefits

(1) Application for non-material changes

The applicant:

For the applicant, these costs will be significantly less than would otherwise have to be incurred to again go through the whole development consent order application process. That latter process would mean it incurring the costs of having to fulfil all of the pre-application obligations including consulting all of the prescribed statutory consultees, local authorites and the public, preparing and submitting a complete set of documents for the whole infrastructure scheme and not just for the changes. It would also have to publicise that an application had been accepted by the Commission for examination, and would then have the full development consent order examination process to engage in.

The benefit of the non-material change process is that it will be much simpler, quicker and cheaper. As the applicant is able to cross-refer to documents it had previously produced and submitted for the original development consent order application, this will reduce the costs associated with producing documentation needed to support an application for a non-material change. It is also anticipated that the extent of the new documents that it does produce will be significantly less than would be required for a material change application (let alone for a whole new development consent order application) given that the expected impact of the change is required to be relatively insignificant. The applicant is not required to undertake publicity and consultation at either pre-application or application stages. It is, though, required to reimburse the Commission for the publication cost of putting notices in local newspapers, when the Commission is the appropriate authority. The examination is likely to be conducted through written representations and therefore avoid the expense of attendance at hearings. Overall, these points will minimise the applicant's non-fee costs, and thereby be consistent with the insignificant nature of the expected impacts of the changes to the infrastructure scheme.

The non-applicants:

The costs borne by non-applicants, including local authorities, will depend in part on how much they choose to engage in the appropriate authority's consideration of the application. These will be related to the submitting of, and responding to, written representations. Also, unlike for a development consent order application, there is no statutorily required pre-application consultation and publicity stages, and so no such costs to be borne by non-applicants unless an applicant chooses to seek engagement with them. Overall, the key point is that the insignificant nature of the proposed changes would limit the degree of consideration needed by non-applicants, and therefore limit the costs associated with any engagement that they choose to undertake. In any case, with regards to local authorities and statutory regulators, they are deemed to be fulfilling roles for which they are centrally funded through their respective funding sources.

In the circumstances of where the holder of the development consent order is not the applicant for the non-material change, it is assumed that it would wish to engage in the appropriate authority's consideration process and therefore submit written representations, given that the proposed change would have direct consequences for the holder if granted. Depending on the outcome of the application, the holder may also incur costs as a consequence of any change that may have been granted to the order, and/or if the application process otherwise causes delays in the implementation of the existing development consent. If any such costs were to be incurred, these could vary significantly depending on the circumstances of each case. Therefore, we do not consider this is something that can be appropriately quantified in this impact assessment, or is relevant to a consideration of the need to bring these procedures into force. Also, there was no equivalent opportunity within the previous infrastructure regimes for

non-holders of the extant order to submit an application to change that order, therefore there is no precedent that can be used to estimate those consequential impacts.

Compared to the counterfactual, we would expect potential non-fee costs borne by the applicant and other persons to be significantly lower for an application for a non-material change. Where the appropriate authority is the Commission, its costs incurred for considering the application is recovered through the fee charged. In the anticipated rare occasions where the Secretary of State is the appropriate authority, all of its costs would be borne by the government department in question and would normally be the one that has policy responsibility for that infrastructure.

(2) Application for material changes:

The applicant:

For the applicant, it will undertake the same stages as are required for a development consent order application, but the extent of the material changes being sought will have a significant bearing on the amount of non-fee costs that it will incur to proceed through each stage. For example, the more substantial the expected impacts of the changes, the greater will be the amount of new documentation needed to support the application. This will likely have impacted on the amount of pre-application engagement required with statutory consultees, local authorities, any other organisations and the public. The applicant will be able to seek permission from the appropriate authority to minimise the consultation and publicity activity, and therefore those costs, to reflect the nature of the changes proposed.

As with non-material change applications, the promoter is able to cross-refer to documents it had previously produced and submitted for the original development consent order application, and so this will reduce the costs associated with producing the documentation needed to support the material changes application. Also, other work which had been undertaken for the original development consent order application can also be drawn upon and thereby reduce the administrational costs, for example the identification of, and engagement with, consultees. When it has submitted its application, the applicant will be required to fulfil publicity and notification requirements at that stage. As with the pre-application stage, it will be able to seek permission from the appropriate authority to minimise these requirements and the associated costs.

For the examination stage, the nature of the material changes will have a significant bearing on its format and duration, and therefore the amount of non-fee costs borne by the applicant. Those costs are typically expected to relate to possible attendance at hearings, the production of written representations and responses to representations submitted by others, and any legal and other specialists' costs that it chooses to incur. As was stated earlier, the non-fee costs incurred by the applicant at this stage are expected to be proportional to the length of the examination. This means that the shorter the examination for a material change application vis-à-vis that needed for a re-application for the whole development consent order (the counterfactual), then the lower will be the non-fee costs and in the same proportion. This is in contrast to the counterfactual situation which would result in broadly the same non-fee costs as if it was effectively a whole new application for a development consent order.

Overall, the non-fee costs that could be borne by the applicant are expected to be less than those for making an application again for a whole development consent order.

The non-applicants:

For non-applicants, including local authorities, the opportunities or obligations to engage with the pre-application and examination processes would be the same as with an application for the original development consent order, in that the same stages are used. The actual costs incurred would depend on the extent to which they wish to engage. It would also depend on the

magnitude of the proposed changes and the nature of each person's interests in those changes, as well as their interests in the infrastructure scheme itself. All things being equal, the smaller the nature of the proposed change, the less time and resource would be needed to engage in the processes. There is likely to be less consultation activity, the extent of the written representations would be reduced as would be the length of any hearings.

As with non-material change applications, the local authorities and statutory regulators are deemed to be fulfilling roles for which they are centrally funded through their respective funding sources. However, for local authorities, if they receive a request for pre-application advice and which requires substantially more resources than is normal to process, then it is able to recover costs by charging the applicant a fee under section 93 of the Local Government Act 2003.

As with a non-material change application, where the holder of the existing development consent order is not the applicant for a material change, it is expected that it would wish to engage in the pre-application and examination processes. In doing so it would incur costs associated with consulting with the applicant, submitting and responding to written representations and potential attendance at hearings. Depending on the outcome of the application, the holder may also incur costs as a consequence of any change that may have been granted to the order, and/or if the application process otherwise causes delays in the implementation of the existing development consent. Any incurred costs could vary significantly depending on the circumstances of each case. For the same reasons for a non-material change application, we do not consider this is something that can be appropriately quantified in this impact assessment, or is relevant to a consideration of the need to bring these procedures into force. As stated above, there was no equivalent opportunity within the previous infrastructure regimes for non-holders of the extant order to submit an application to change that order, therefore there is no precedent that can be used to estimate those consequential impacts.

Where the appropriate authority is the Commission its costs incurred for considering an application, once it has been submitted by the applicant, is recovered through the fee charged. Some of the Commission's pre-application activity costs are also recovered, e.g. EIA scoping. The remaining pre-application costs are paid for through grant in aid, and include the cost of giving of advice to the public and which is thereby considered to be a 'public good' that is non-recoverable through fees. In the anticipated rare occasions where the Secretary of State is the appropriate authority, all of its costs would be borne by the department in question and is normally that which has policy responsibility for that infrastructure.

Fee cost savings

*(1) Fees payable for an application for non-material changes:*

A fixed fee must be paid by the applicant, where the Commission is the appropriate authority. Any change resulting from the application would only be for the benefit of the person applying, and it is reasonable that costs incurred by the Commission in processing that application are recovered, as far as possible. The appropriate authority has the duty to publicise and notify about the application. However, it is not anticipated that the actual consideration (i.e. examination) of such an application would be particularly time consuming or costly, given that it will relate to matters that are non-material and therefore relatively insignificant. A simple fixed fee is considered appropriate in these circumstances. The calculation of this is set out in Table 1 below, which reflects equivalent activities and day estimates that were used to underpin the calculation of the development consent order application fees. The consultation yielded a few opposing comments on the proposed fee of £6,534, with two considering it to be too low and a two others felt that it was too high. We have agreed with a suggestion that it should be increased to more adequately reflect the cost of making an initial legal consideration of whether or not the proposed change would be non-material. Consequently, we have raised the fee by £357 (one day of Grade 6 Legal resource) to reflect this, which gives a fixed fee of £6,891 per non-material change application.

If there was not a procedure to deal with non-material changes, then the applicant would have to submit a whole new application for the development consent order (the counterfactual), and incur the higher fees that are payable for that significantly more extensive process. The underlying principles, and a detailed break-down of how development consent order application fees are calculated, are set out in the 'Impact Assessment of fees to be charged by the Commission, and the examination procedure rules' (published in March 2010), which accompanied the introduction of The Infrastructure Planning (Fees) Regulations 2010. Further guidance and worked examples to aid interpretation of that fees structure is given in 'The Infrastructure Planning (Fees) Regulations 2010: Guidance'.

Fees for a development consent order application are paid at different stages of the process – submitting the application, pre-examination and on commencement and then the conclusion of the examination. Table 1 of the development consent order fees Impact Assessment shows that the total fees payable for a typical case is estimated at being either £75,000, £209,000 or £394,000 depending on whether it was examined by a single commissioner, normal panel of three commissioners or a large panel of up to five commissioners, respectively.

Using those as baseline figures, with the fee for a non-material change application being a flat rate of just £6,891, this will constitute significant cost saving for those typical cases of approximately £68,109, £202,109 and £387,109, respectively. As non-material changes will be heard by a single commissioner, the saving of around £68,109 is the most appropriate estimate. There would be further savings for the applicant, assuming that no hearings will be required for a non-material change examination, given that the venue costs for hearings are borne by the applicant.

**Table 1: Cost modelling for non-material change application processes:**

| Process | Resource | Straightforward case | Complex case |
|---|---|---|---|
| | **Involves (grade)** | **Time (days)** | **Time (days)** |
| Log application and update website | Executive Officer | 1.00 | 2.00 |
| Publicise application / set deadline for written representations | Executive Officer | 5.00 | 10.00 |
| Consider application and written reps; advise commissioner | Grade 7 | 3.00 | 10.00 |
| Make decision on application; draft decision document | Commissioner | 2.00 | 5.00 |
| Consider application and prepare revised order | Grade 6 | 2.50 | 4.00 |
| Notify relevant parties of decision | Executive Officer | 0.50 | 1.00 |

| Resource | Straightforward case | Complex case |
|---|---|---|
| | **Time (days)** | **Time (days)** |
| Commissioner | 2 | 5 |
| Grade 6 | 2.5 | 4 |
| Grade 7 | 3 | 10 |

| | | |
|---|---|---|
| Executive Officer | 6.5 | 13 |
| | | |
| **Average resource** | | |
| Commissioner | 3.5 | |
| Grade 6 | 3.25 | |
| Grade 7 | 6.5 | |
| Executive Officer | 9.75 | |
| | | |
| **Resource** | **Day rate (£)** | |
| Commissioner | 589 | |
| Grade 6 | 357 | |
| Grade 7 | 308 | |
| Executive Officer | 171 | |
| | | |
| **Average cost profile** | | |
| Commissioner | £2,062 | |
| Grade 6 | £1,160 | |
| Grade 7 | £2,002 | |
| Executive Officer | £1,667 | |
| **Flat rate fee** | **£6,891** | |

*Assumptions relating to Table 1:*

*(i) Application is determined by a single commissioner.*
*(ii) There is an equal split of applications – 50% are 'straightforward' and 50% are 'complex' cases. These are relative terms as, irrespective of how complex the case is, it will still be less costly to process than a material change application as they involve administering fewer and less complex procedures.*
*(iii) The resource requirement excludes the publication costs of putting notices in local newspapers (which is to be reimbursed from the applicant), but includes that needed for the notification activities, such as preparing relevant statements, making arrangements for plans to be available for local inspection, arrangements for placing of site notices, etc.*
*(iv) A Grade 7 and Commissioner will need to undertake site visits for 'complex' cases.*
*(v) All applications are examined through written representations.*
*(vi) The fee is payable regardless of whether the Commission eventually rejects the application on grounds that it was not a valid non-material change under paragraphs 2(1) and 2(2) of Schedule 6 of the Planning Act 2008.*
*(vii) 75% of applications are approved, and require Legal Grade 6 drafting.*

## *(2) Fees payable for applications for material changes (including revocation):*

The underlying principles, and a detailed break-down of how development consent order application fees are calculated, are set out in the 'Impact Assessment of fees to be charged by the Commission, and the examination procedure rules' (published in March 2010). As the procedures for applying for, and examining, a material changes application are essentially the same as those for a development consent order application, it is considered appropriate for the fees structure and levels to be broadly the same. The only difference being that there is no concept of a 'formal acceptance stage' for a material change application. The Commission will still need some funding to undertake the initial work upon receipt of an application, and so a fee of £4,500 will still be payable at that stage. However, the pre-examination stage fee has been reduced by that £4,500 so as to reflect the overall reduction in processes that the Commission undertakes.

This means that the fees for a material change application are as follows:

(a) Fee of £4,500 payable on making an application

(b) Pre-examination fee based on the number of commissioners handling the application: (a) £8,500 for a single commissioner; (b) £25,500 for two or three commissioners; or (c) £38,500 for more than three commissioners

(c) Examination fee which is based on a day rate that depends on the number of commissioners, and multiplied by the number of the relevant days that the examination takes. This fee is paid in two stages: (a) an initial payment which is half of the day rate multiplied by an estimated number of examination days that will be required, and (b) a final payment upon completion of the examination that consists of the full day rate multiplied by the number of actual examination days used minus the initial payment. The day rates are the same as those for a development consent order application, namely £1,230 for a single commissioner case, £2,680 for two or three commissioners, and £4,080 for more than three commissioners.

The number of examination days required will depend on the issues raised by an application, as well as the typical time-scales needed for administering the processes - such as making arrangements for hearings, providing appropriate deadlines for receipt of responses to written representations, etc. These two elements are broken down in the development consent order application fees Impact Assessment as ‘core consideration days’ and ‘additional time days’, with the two added together to give the total examination days (or ‘relevant days’). The number of days that were estimated for a typical examination, as set out at page 49 in the development consent order fees Impact Assessment, is as follows:

(a) Single commissioner – total of 47 days
(b) Normal panel – total of 65 days
(c) Large panel – total of 85 days

To date, no applications have gone through the examination process, which means it has not yet been possible to review the accuracy of these original estimates.

The length in days of a material change examination could vary considerably from case to case, as it will largely be dependent on the nature of the changes that are proposed. In our analysis of estimating what the typical length might be, we have considered the nature of the activities that are likely to be needed for these examinations and how those activities, and the time needed for them, may differ in relation to a development consent order examination. A summary of our analysis is set out in Table 2 below. For illustration purposes, it can be seen that the estimates have resulted in the total number of days for typical material change examinations being approximately 25%, on average, of those needed to examine an application for a development consent order.

This reduction in days differentiates across the activity categories, given that the work in question, and therefore days needed, will vary depending on the specific activity and also whether it is for a single commissioner, normal panel or large panel case. A certain critical mass of administrational procedures will be needed, irrespective of the magnitude of the proposed changes. This causes the days needed for that category to be of a higher proportion of total examination days, relative to the equivalent of that category for development consent order examinations. The same outcome is not expected for the other two categories. Consequently, the percentage of days needed for the other two categories is lower for material change examinations, again when compared with their counterfactual equivalents for development consent order examinations.

The percentage of days is also lower for those other two categories as it reflects that the content of the application documents, and matters raised at any required hearings, will only need to be considered in a context that is limited to the impact of the proposed changes, rather than considered in a wider context of all the other issues that would have been raised before within the original development consent order. With the counterfactual, a consideration of a whole proposed development consent order would require proportionally more days as we

would expect there to be many more issues contained in those documents, and raised in hearings, which would need to be considered and cross-referred to in the context of each other.

With respect to the consideration of application documentation, we also consider there is likely to be a differentiation when compared across the commissioner size categories for material change examinations. We expect large panel cases to require proportionally more time for this, relative to a normal panel case, given the greater complexity of those larger cases. Also, a single commissioner case will still require a certain critical mass of time irrespective that the case is relatively smaller (as with the administrative activity category). Therefore, we envisage the proportion of time needed for consideration of those documents for normal panel cases will sit between the large panel and single commissioner case figures.

The estimates in Table 2 also reflect an average of relatively simple and more complex cases within each commissioner number category, i.e. regarding the number and magnitude of changes being applied for within a single application. They also allow for the fact that the Commission may not deem it appropriate to charge for some days during which it is only awaiting receipt of written responses, or for expressions of interest for attendance at hearings, etc., and therefore would not charge those as 'relevant days' of examination for the purposes of charging the day rate. That is to say, not all working days that fall within the formal examination period will necessarily be utilised as examination days.

**Table 2: Comparison of examination days needed for material change and development consent order applications**

| Activity undertaken by appropriate authority | Estimated number of examination days | | | | | |
|---|---|---|---|---|---|---|
| | Single Commissioner Cases | | Normal Panel Cases | | Large Panel Cases | |
| | Development consent order application | Material change application | Development consent order application | Material change application | Development consent order application | Material change application |
| Consideration of application documents, written representations, etc | 36 | 8 | 48 | 10 | 61 | 13 |
| Hearings and their associated work (preparation for, and follow up to) | 6 | 2 | 11 | 3 | 15 | 4 |
| Administrational procedures | 5 | 2 | 6 | 3 | 9 | 4 |
| Estimated total length of examination | 47 | **12** | 65 | **16** | 85 | **21** |
| % of development consent order total | 100% | **25%** | 100% | **25%** | 100% | **25%** |

For a material change application, Table 2 yields the following number of days estimated for the examination by commissioner number category:

(a) Single commissioner – total of 12 days
(b) Normal panel – total of 16 days
(c) Large panel – total of 21 days

Using the development consent order application fees as the baseline, this gives fees cost savings under a material change applications process of £47,000 for single commissioner, £136,000 for normal panel, and £265,000 for large panel cases, as set out in the table below.

**Table 3: gross cost and net saving for material changes**

| Application Stage | Single Commissioner | Normal Panel | Large Panel |
|---|---|---|---|
| Submitting application | £4,500 | £4,500 | £4,500 |
| Pre-examination | £8,500 | £25,500 | £38,500 |
| Examination:<br>Daily fee rate<br>Typical length<br>Total examination fee (rounded) | <br>*£1,230*<br>12 days<br>£15,000 | <br>*£2,680*<br>16 days<br>£43,000 | <br>*£4,080*<br>21 days<br>£86,000 |
| **Total fees for a typical material changes application** | **£28,000** | **£73,000** | **£129,000** |
| Total fees for a typical development consent order application | £75,000 | £209,000 | £394,000 |
| **Savings due to the use of a material changes application process** | **£47,000** | **£136,000** | **£265,000** |

Venue costs – where the applicant does not provide venues for hearings (if hearings are required), the applicant will be required to reimburse the venue costs incurred by the Commission.

No fees are payable where:
(1) the Secretary of State is the appropriate authority;
(2) a local authority is applying for a material change due to a development being begun but abandoned;
(3) the Secretary of State makes an application to the Commission, on the grounds that if the development was carried out in accordance with a granted development consent order, there would be a contravention of Community law or any of the Convention rights, or if there are other exceptional circumstances that would make it appropriate to consent a material change;
(4) an application is not required to be submitted.

Overall benefits

For illustrative purposes, it is estimated that 10% of development consent orders will be the subject of a non-material change application and 10% subject to a material change application. It is also estimated that, for material change applications, 80% of these will need to be examined by a single commissioner and 20% by a normal panel. The development consent order fees Impact Assessment had estimated the submitting of just one development consent order application per year that would require a large panel and, as it statistically very unlikely that there would be a material change application that required a large panel in any given year,

the large panel case type is omitted from this illustration. However, under a ten year time period, an estimate of one such case would be appropriate.

No development consent orders have yet been issued by the Commission, and so it is not yet possible to ascertain a more accurate likelihood of how many may need to have changes made to them subsequently. In any case, this is irrelevant for the consideration of whether or not such procedures should be brought into force to thereby enable extant orders to be amended. No opinions on the estimated frequency of use were expressed within the consultation responses. Therefore, we have continued to use these estimates and which are based on our interpretation of equivalent types of post-development consent order decision approvals that are made under other infrastructure consenting procedures (e.g. the Transport and Works Act 1992 and the Electricity Act 1989). A more direct comparison is not feasible as those other procedures can yield different circumstances and timings of when alterations can be made to consented schemes, compared with the approach taken under the Planning Act 2008, and that Act's concept of a 'non-material change' does not exist at all in those other procedures.

All non-material applications are examined on the basis of a simple flat rate fixed fee, and therefore require no differentiation as a single commissioner will be sufficient for all of those cases. Using the assumption that 45 applications for development consent orders are submitted annually (as set out in the development consent order fees Impact Assessment), this yields the following annual cost in terms of fees:

**Table 4: Estimated gross total costs for non-material changes (p.a.)**

| Non-material change applications | Single commissioner |
|---|---|
| Annual applications (rounded) | 5 |
| Fee per application | £6,891 |
| Total fees per year (rounded) | £35,000 |

**Table 5: Estimated gross total costs for material changes (p.a.)**

| Material changes | Single commissioner | Normal panel | Large panel |
|---|---|---|---|
| Annual applications | 4 | 1 | - |
| Typical fee per application | £28,000 | £73,000 | - |
| Total fees per case / per year | £112,000 | £73,000 | - |
| Total fees per year | £185,000 | | |

Comparing these estimates to the counterfactual, i.e. the likely cost of full re-application allows us to work out the estimated total annual savings to applicants.

**Table 6: Estimated savings for non-material changes (p.a.)**

| Non-material change applications | Single commissioner |
|---|---|
| Total fees per year (rounded) | £35,000 |
| Total counterfactual fees per year (rounded) | £375,000 |
| Total saving per year (rounded) | £340,000 |

**Table 7: Estimated savings for material changes (p.a.)**

| Material changes | Single commissioner | Normal panel | Large panel |
|---|---|---|---|
| Annual applications | 4 | 1 | - |
| Total fees per year (rounded) | £112,000 | £73,000 | - |
| Total counterfactual fees per year (rounded) | £300,000 | £209,000 | |
| Total saving per year (rounded) | £188,000 | £136,000 | |
| Overall saving p.a. | £324,000 | | |

The table below provides the overall annual saving (Tables 6 and 7) and the discounted saving over 10 years. For the purposes of the discounted savings the estimates also include the saving (£265,000 - see table 3) that is likely to arise for a large panel material change (estimated at one per ten year period). For the purposes of the calculation it is assumed this saving arises in the middle of the appraisal period (i.e. year 5).

**Table 8: Estimated total and average annual and 10 year discounted saving – central**

| Saving (£) | Central (10%) |
|---|---|
| Total annual | £664,000 |
| 10 year discounted | £5,946,000 |
| Average annual | £690,500 |

*Sensitivity Analysis*

Finally, the estimates above are subjected to sensitivity analysis to reflect the uncertainty around what proportion of future development consent orders might be subject to a change. We provide a range from 5% to 15%, with the analysis above (based on 10%) representing the central case. The table below shows the 10 year discounted savings for the sensitivity analysis.

**Table 9: Estimated total and average annual and 10 year discounted saving sensitivity**

| Saving (£) | 5% scenario | 15% scenario |
|---|---|---|
| Total annual | £230,000 | £895,000 |
| 10 year discounted | £2,213,000 | £7,933,000 |
| Average annual | £257,000 | £921,000 |

**Option 2**

Do nothing – i.e. not make regulations.

Without regulations, there will not be procedures in place that will allow for changes to be made to an order that had been made. This would have significant consequences which would prevent the consent regime from operating as intended, and therefore from meeting policy objectives. The applicant of the original development consent order, or its successor in title, would have to submit an entire new application for a development consent order if it wanted to make any changes. The cost in terms of higher level of fees payable by an applicant if it had to submit a whole new application for a development consent order, rather than being able to submit an application for non-material or material changes, are set out in the following tables.

**Table 10: Estimated cost per case in absence of changes**

| Non-material changes | Single Commissioner | Normal Panel | Large Panel |
|---|---|---|---|
| Order application fee | £75,000 | £209,000 | £394,000 |
| Non-material change fee | £6,891 | £6,891 | £6,891 |
| **Net higher fee cost per case (rounded)** | **£68,109** | **£202,109** | **£387,109** |

| Material changes | Single Commissioner | Normal Panel | Large Panel |
|---|---|---|---|
| Order application fee cost | £75,000 | £209,000 | £394,000 |
| Material change fee | £28,000 | £73,000 | £129,000 |
| **Net higher fee cost per case** | **£47,000** | **£136,000** | **£265,000** |

Other key implications for not making regulations are that (a) other parties prescribed under the Act as having an interest in the land to which the order relates, or any other person for whose benefit the order has effect, would be prevented from exercising their statutorily intended rights of seeking changes, and (b) an inability to make changes to a made order would also risk it being in breach of Community law and Convention rights if these were to change after the order had been made.

**Specific impacts**

The specific impact tests have yielded the following:

Statutory equality duties
We do not anticipate the policy having any adverse impacts upon statutory equality duties.

Economic impacts
Competition – We do not anticipate the policy having any adverse impacts upon competition.

Small firms – Whilst the majority of infrastructure projects will be undertaken by large firms it is likely that some will be done by small sized firms, such as some renewable energy projects. We do not believe these firms will be disproportionately or in other ways adversely affected by the policy. The procedures and fees have been closely aligned with those that are applicable for a development consent order. Those fees were specifically rebalanced and in favour of less complex projects, such as those that are most likely to be undertaken by small firms, in light of public consultation responses.

Environmental impacts
Greenhouse gas assessment - We do not anticipate the policy having any adverse impacts upon greenhouse gas issues.

Wider environmental issues - We do not anticipate the policy having any adverse impacts upon wider environmental issues.

Social impacts
Health and well-being - We do not anticipate the policy having any adverse impacts upon health and well-being issues.

Human rights - We do not anticipate the policy having any adverse impacts upon human rights issues.

Justice system - We do not anticipate the policy having any adverse impacts upon justice system issues.

Rural proofing - We do not anticipate the policy having any adverse impacts upon rural issues.

Sustainable development
We do not anticipate the policy having any adverse impacts upon sustainable development issues.

# Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

# Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

| |
|---|
| **Basis of the review:** [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review , or there could be a political commitment to review (PIR)];<br>The Regulations are subject to a duty to review. The review is required to have been untaken and completed within 5 years from the day on which the Regulations came into force. |
| **Review objective:** [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]<br>To assess whether the procedures introduced by the regulations are operating as intended, and the fees for the infrastructure applications submitted under these procedures have been set at appropriate levels. |
| **Review approach and rationale:** [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]<br>A review of the monitoring data and a consideration of stakeholder views - to gain a comprehensive view of the adequacy and frequency of use of the regulations. |
| **Baseline:** [The current (baseline) position against which the change introduced by the legislation can be measured]<br>The changes will be measured against a baseline of what would have happened if the regulations had not been introduced, i.e. the infrastructure applications having to be submitted in accordance with different procedures that had previously been introduced for the regime. |
| **Success criteria:** [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]<br>Lower costs incurred, and less time needed, for the making and consideration of applications for development consent submitted under the regulations relative to what would have been the otherwise alternative procedures. |
| **Monitoring information arrangements:** [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]<br>Monitoring will be undertaken by the regime's sponsorship team currently operating in DCLG, and liaising with the Infrastructure Planning Commission that is tasked with undertaking the consideration of the applications. |
| **Reasons for not planning a review:** [If there is no plan to do a PIR please provide reasons here] |

Add annexes here.